



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

FEB 02 2017

Certified Mail

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Dr. Harold Begay, Superintendent  
Tuba City Unified School District #15  
P.O. Box 67  
Tuba City, AZ 86045

Re: Finding of Violation for Dzil Libei (Cameron) Elementary School Public Water System;  
Public Water System Identification Number 090403011

Dear Dr. Begay:

The United States Environmental Protection Agency, Region 9 ("EPA") is issuing this finding of violation ("FOV") to the Tuba City Unified School District #15 ("District") for violations of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300f, *et seq.* Our review of the relevant records indicates that the District has violated the SDWA and its National Primary Drinking Water Regulations ("NPDWRs") at 40 C.F.R. Part 141 by failing to comply with the maximum contaminant level ("MCL") for arsenic; failing to monitor for arsenic, lead and copper; and failing to provide public notice of violations at the Dzil Libei ("Cameron") Elementary School public water system ("System"). Further information related to these violations is provided below.

Arsenic MCL Violation

The NPDWRs at 40 C.F.R. § 141.2 define a MCL as the maximum permissible level of a contaminant in water which is delivered to any user of a public water system. Pursuant to 40 C.F.R. § 141.62(b), the MCL for arsenic is 0.010 mg/L. Compliance with the MCL for arsenic is determined based on a running annual average ("RAA") at any sampling point. Per 40 C.F.R. § 141.23(i)(1), a system with a RAA above the MCL for any sampling point has violated the MCL, and if any one sample would cause the annual average to be exceeded, the system is out of compliance with the arsenic MCL immediately. Pursuant to 40 C.F.R. § 141.23(i)(1), if a system fails to collect the required number of samples, compliance (average concentration) is based on the total number of samples collected.

In August 2014, the District reported an individual sample result of 0.0341 mg/L arsenic. Because the System failed to collect the required number of samples for the three preceding quarters,<sup>1</sup> the RAA in August 2014 exceeded the MCL for arsenic, resulting in a violation of the MCL. In November 2015, the System again reported an exceedance of the MCL for arsenic, based on a sample result of 0.0431 mg/L

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<sup>1</sup> The System was required to perform quarterly monitoring for arsenic beginning in March 2012.

arsenic. Because this sample result alone would cause the RAA to exceed the MCL, EPA determined that the System was in violation of the MCL immediately as of that sample date.

#### Failure to Monitor Violations

The NPDWRs at 40 C.F.R. § 141.23(c)(7) require public water systems to monitor quarterly following an exceedance of the arsenic MCL. As noted above, once a system has exceeded the MCL for arsenic, it may decrease the frequency of monitoring only when it can demonstrate that the system is “reliably and consistently below the [MCL].” 40 C.F.R. § 141.23(c)(8). Data submitted to EPA by the District indicates that monitoring of the System first registered an exceedance of the arsenic MCL in March 2012, which triggered the requirement to perform quarterly monitoring. The System failed to monitor for arsenic in the third quarter of 2012, the first, third, and fourth quarters of 2013, the first, second, and fourth quarters of 2014, the first, second, and third quarters of 2015, and the first, second, and third quarters of 2016. These failures to monitor for arsenic are violations of the NPDWRs.

The NPDWRs at 40 C.F.R. § 141.86(d) also require public water systems to monitor for lead and copper during consecutive six-month periods. A small system that meets the action levels for lead and copper during two consecutive six-month monitoring periods may reduce the frequency of sampling to once per year. 40 C.F.R. § 141.86(d)(4)(i). A small system that meets the lead and copper action levels for three consecutive years of monitoring may further reduce the frequency of monitoring from annually to once every three years. 40 C.F.R. § 141.86(d)(4)(iii). A small water system subject to reduced monitoring that exceeds the lead or copper action level must resume sampling during consecutive six-month periods, in accordance with 40 C.F.R. § 141.86(d).

The System’s sampling results from August 2011 indicated an exceedance of the action level for lead, following which, the System was required to monitor for lead and copper during consecutive six-month periods. The System sampled for lead, but not copper for the two consecutive six-month periods in 2012. The system failed to monitor for lead or for copper in 2013, 2014, and 2016. The System may need to consider installing corrosion control in accordance with 40 C.F.R. § 141.82 if sample results continue to indicate exceedances of the action level for lead.

#### Failure to Provide Public Notice Violations

The NPDWRs at 40 C.F.R. Part 141, Subpart Q, require each owner or operator of a public water system to provide public notice of any failure to comply with a NPDWR, including violations of an MCL or a monitoring requirement. Public notice requirements vary depending on whether the underlying violation is classified as a Tier 1, 2, or 3 violation, as defined in 40 C.F.R. Part 141, Subpart Q, Appendix A.

As applicable here, 40 C.F.R. § 141.203 requires the public water system to provide Tier 2 public notice no later than 30 days after the System learns of an arsenic MCL violation. Pursuant to 40 C.F.R. § 141.203(c), where a Tier 2 public notice is required, a system must provide the initial public notice

and any repeat notices in a form and manner that is reasonably calculated to reach persons served by the system within the required time period. A system must repeat the notice every three months as long as the violation or situation persists. The System was required to submit documentation to EPA indicating that it provided the required public notice for the arsenic MCL violations noted above, yet it has failed to do so.

In addition, 40 C.F.R. § 141.204 requires the public water system to provide Tier 3 public notice no later than one year after the public water system learns of a monitoring violation under 40 C.F.R. Part 141, including violations of monitoring requirements for arsenic, and for lead and copper. Public water systems must provide the initial notice and any repeat notices in a form and manner that is reasonably calculated to reach persons served in the required time period. The System was required to submit documentation to EPA indicating that it has provided the required public notice for the violations of monitoring requirements described above, yet it has failed to do so.

### Next Steps

Under section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), EPA is authorized to issue an Administrative Order requiring the public water system to comply with the SDWA's NPDWRs and applicable requirements. Any person who violates, or fails or refuses to comply with such an Order, may be liable to the United States for up to \$54,789 per day of violation.

Because of the ongoing nature of the violations, EPA's primary objective is an enforceable schedule for the District to expeditiously return to compliance with the SDWA. The Agency would prefer to enter into an administrative order on consent ("AOC") with the District to resolve the aforementioned violations, rather than issue a unilateral compliance order as described in the previous paragraph. Therefore, we invite the District to enter into discussions with EPA on a mutually acceptable AOC that contains a schedule for correcting the violations noted above. If the District is interested in such discussions, you or your representatives should contact Mr. Everett Pringle of the Enforcement Division at (415) 972-3548 or have your attorney contact Ms. Tessa Berman of the Office of Regional Counsel at (415) 972-3472 by **March 2, 2017**.

In the meantime, you are obligated to continuously comply with the arsenic MCL at all times. You should also continue to monitor and report consistent with the requirements of the SDWA, including sampling for arsenic on a quarterly basis per 40 C.F.R. § 141.23(c)(7), sending all samples taken to a State certified laboratory for analysis, and reporting all monitoring results to U.S. EPA within 10 days of receipt of the results per 40 C.F.R. § 141.31(a). You must provide public notice of any arsenic MCL violations every three months, for as long as the violation continues, as required by 40 C.F.R. §§ 141.203(b) and 141.205. You must also provide public notice of monitoring violations annually for as long as the violations persist, per 40 C.F.R. §§ 141.204(b) and 141.205. The System must submit a copy of the public notice and a certification statement to U.S. EPA that all public notice requirements have been met within 10 days of completing the public notification as required by 40 C.F.R. §§ 141.31(d) and 141.201(c)(3), to:

Everett Pringle  
SDWA Enforcement Section  
U.S. Environmental Protection Agency  
75 Hawthorne Street (ENF-3-3)  
Phone: 415-972-3548  
Fax: 415-947-3519  
E-mail: [pringle.everett@epa.gov](mailto:pringle.everett@epa.gov)

In addition, please ensure that any data or results continue to be submitted to the EPA Drinking Water Program through the Data Manager at [DataManager@epa.gov](mailto:DataManager@epa.gov). Finally, the District should comply with all requirements of the Revised Total Coliform Rule, including submission of a sample siting plan, as described in 40 C.F.R. § 141.853.

Enclosed with this letter is an information sheet entitled *U.S. EPA Small Business Resources* that may be helpful if you are a qualified small business. Please contact Everett Pringle, Enforcement Officer, at (415) 972-3548 with any questions.

Sincerely,



Kathleen H. Johnson  
Director, Enforcement Division

Enclosures:

EPA Small Business Resources Information Sheet

cc: Sanora Isaac, Principal, Dzil Libei (Cameron) Elementary School  
Alex Woody, Facility Manager for TCUSD